



Professional Service Bid Solicitation for State of Tennessee for Consulting Services for Pilot Project Migration of Users to Active Directory

May 1, 2008

1. DESCRIPTION OF REQUIRED SERVICE

1.1. The successful Bidder must provide the exact service as detailed and required by Attachment 1, *Pro Forma* Contract, which specifically details the State's required:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

1.2. The *pro forma* contract substantially represents the contract document that the successful bidder must agree to and sign. The State reserves the right, at its sole discretion, to add terms and conditions or to revise *pro forma* contract requirements in the State's best interest, subsequent to this Alternative Procurement process.

2. SCHEDULE OF EVENTS

The following Schedule of Events represents the State's best estimate of the schedule that shall be followed for the solicitation and award of bid. Unless otherwise specified, the time of day for the following events shall be between 8:00am and 4:30pm Central Time.

The State reserves the right, at its sole discretion to adjust this schedule as it deems necessary.

	Event	Date	Time
1.	State Issues Bid Solicitation Notice	May 1, 2008	
2.	Deadline for Written Comments	May 15, 2008	
3.	State Issues Responses to Written Comments	May 28, 2008	
4.	Deadline for Submitting a Proposal and State Opens Bid Proposals	June 9, 2008	2:00pm
5.	State Completes Bid Evaluation	June 11, 2008	
6.	State Sends a written Evaluation Notice to Proposers and State Opens Files for Public Inspection	June 16, 2008	9:00am
7.	Contract Signing	June 26, 2008	
8.	Anticipated Contract Start Date	July 11, 2008	

3. WRITTEN COMMENTS

- 3.1. Each Bidder must carefully review this *Bid Solicitation* and all attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning procurement objections must be made in writing and received by the Procurement Coordinator identified in Section 5.1 no later than the Written Comments Deadline detailed in Section 2 above.

4. BID REQUIREMENTS & MINIMUM CONTRACTOR QUALIFICATIONS

- 4.1. Each bidder must submit ALL of the following:
 - 4.1.1. a completed, exact copy of Attachment 2, *Cost Proposal Bid Sheet*. The Cost Proposal Bid must be in a clearly labeled, separately sealed envelope.
 - 4.1.2. a description of the Bidder's experience providing the required or similar services detailed in the attached *pro forma* contract
 - 4.1.3. three references with whom the Bidder has previously contracted to provide service comparable to that required by the attached *pro forma* contract
 - 4.1.4. a description detailing how the Bidder will provide service if awarded the subject contract
 - 4.1.5. a copy of a valid certificate of insurance indicating liability insurance in the amount of at least Five Hundred Thousand dollars (\$500,000.00)
 - 4.1.6. written confirmation from Quest Software confirming the Bidder has a corporate relationship with Quest Software and will have access to required propriety information related to the Quest migration software suite of tools. This confirmation may be in the form of an email from Quest Software.
- 4.2. In addition to the requirements of Section 4.1., *et seq.* above, each Bidder that will use other individuals to provide services under the subject contract must ALSO submit ALL of the following:
 - 4.2.1. a description of each proposed service provider's experience providing the required or similar services detailed in the attached *pro forma* contract;
 - 4.2.2. a copy of a valid certificate(s) of insurance indicating that each proposed service provider is insured with liability insurance in the amount of at least Five Hundred Thousand Dollars (\$500,000.00).
- 4.3. The State reserves the unilateral right to amend this *Bid Solicitation* in writing at any time. If a *Bid Solicitation* amendment is issued, the State will convey such amendment to the potential Bidders who submitted Written Comments.

5. BID DEADLINE & INSTRUCTIONS

- 5.1. The deadline for submitting two copies of all required bid documentation is:

June 9, 2008 – 2:00 pm

All bid documentation must be submitted, no later than the bid deadline above, to:

Mitzi Hale, Procurement Coordinator
Department of Finance and Administration
William R. Snodgrass Tennessee Tower, 17th Floor SE
312 8th Avenue North
Nashville, TN 37243
Telephone Number 615-741-3735
Fax Number 615 741-6164
Email address: Mitzi.Hale@state.tn.us

6. BID EVALUATION

- 6.1 A team of four procuring agency employees will review the supporting documentation from each bidder.
 - 6.1.1 In order for a bid to be accepted for further evaluation, the evaluators must determine (based upon the minimum criteria detailed by the *Bid Solicitation*) that a bidder's documentation of qualifications indicates that the bidder would be, at least, minimally acceptable as a contractor for the given service.
 - 6.1.2 The evaluator determinations regarding each bidder will be documented in writing for the procurement file. The State will not open Cost Proposal Bids until it has completed the initial determination described above.
- 6.2 The procurement coordinator will review the *Cost Proposal Bid Sheet* of each bidder evaluated to be acceptable.
 - 6.2.1 The procurement coordinator will determine whether each *Cost Proposal Bid Sheet* complies, without qualification, with *Bid Solicitation* instructions and will document any finding(s) of noncompliance in writing for the procurement file.
 - 6.2.2 The procurement coordinator will then review all compliant *Cost Proposal Bid Sheets* to identify the bidder offering the lowest cost to the State.
- 6.3 Department of Finance and Administration will award the contract (drafted as detailed in the Bid Solicitation and in accordance with relevant F&A regulations) to the responsive, responsible bidder offering the lowest cost to the State.

**Professional Service Bid Solicitation # 317.03-182-08
Attachment 1, Pro Forma Contract**

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and CONTRACTOR LEGAL ENTITY NAME, hereinafter referred to as the "Contractor," is for the provision of Novell Directory Services (NDS) Migrator consulting services, as further defined in the "SCOPE OF SERVICES."

The Contractor is A/AN INDIVIDUAL, FOR-PROFIT CORPORATON, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY.

Contractor Federal Employer Identification or Social Security Number: ID NUMBER

Contractor Place of Incorporation or Organization: LOCATION

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor will provide technical consulting services to assist the State in the development of a methodology and schedule to complete a pilot project for the phased migration of 3,000 users, their workstations and associated file services, from Novell to Microsoft Active Directory (AD) and from Active Directory to Active Directory. Including the migration from Windows NT 4.0 to Active Directory in conjunction with NDS to Active Directory (AD) migration. In addition, the Contractor will provide consulting services to directly assist the State in the successful completion of the phased migration of these 3,000 users to AD, using Quest's NDS Migrator software, other Quest migration tools, and any custom written scripts as necessary.
- A.3. Services are to be provided by consulting staff with in-depth knowledge of the Quest suite of software products. Staff provided under this contract must have a minimum of three (3) years of experience using the Quest's NDS Migrator software in "real world" AD migration efforts.
 - a. The number of consultants assigned to complete the pilot project will be at the Contractor's discretion. However the Contractor must ensure that staffing is adequate to meet all the objectives of the project.
 - b. The State expects that the majority of the services provided by the Contractor under this Contract will be performed on-site at State facilities. The State reserves the right to have any work performed on site if the State deems this to be in the best interest of the project.
 - c. The State reserves the right to request the replacement of any consultant supplied by the Contractor. This provision shall not be construed to give the State the right to require the Contractor to terminate any Contractor employee's employment. Rather, this provision is intended to give the State only the right to require that the Contractor discontinue using an employee in the performance of services for the State.
- A.4. The pilot project will include the following project Phase Milestones:

- a. Initial Assessment and Phased Migration Approach Plan
- b. Phased Migration of Pilot Users
- c. Mentoring of State Staff
- d. Technical Support Services

These Phase Milestones are described below.

- A.5. Initial Assessment and Phased Migration Approach Plan. The Contractor will work with the State to develop an initial assessment process, complete an initial assessment of the State's AD, desktop and server environment(s), and the development of a phased migration approach plan to complete the migration of 3,000 users to AD.

During the initial assessment, the Contractor will:

- a. Develop an initial assessment process for the State's AD, desktop and server environment(s).
- b. Complete an assessment of the State's AD, desktop and server environment(s) and provide the State with recommendations to address any issues related to these environments which may negatively affect the successful migration to AD. The State will provide technical staff to assist in the completion of the initial assessment.
- c. Assist the State in identifying the 3,000 users to be included in the phased pilot migration to AD. The 3,000 users must include users located in downtown Nashville as well as in various regional offices located across the state.
- d. Assist the State in the development of a schedule for the timely completion of the phased migration of these 3,000 users to AD. The final approval of the 3,000 users to be included in the phased pilot will be at the sole discretion of the State.
- e. Develop a Phase Migration Approach Plan for the completion of the phase pilot project. At a minimum, the Phase Migration Approach Plan will include the following:
 - i. Confirmation and verification of architectural design and implementation infrastructure (based on the existing NDS, AD and NT4 environment and planned AD environment) and recommendation for addressing any issues identified during the initial assessment.
 - ii. Migration processes and procedures to be followed for the successful migration of users to AD, including any pre-migration preparation work which must be completed for both the server and desktop components.
 - iii. Strategy for the creation of an environment for training State staff in the migration process and for use in troubleshooting desktop and/or server issues that may arise during the migration of users to AD.
 - iv. Migration strategy for phased pilot implementation, including the identification of the 3,000 users, the number of users to be migrated in each migration phase, and projected timeline for completion of each migration phase
 - v. Plan for mentoring state staff to assume responsibility for migration after the pilot project
 - vi. Plan for creating a document repository for technical issues and problems that are encountered during the pilot

The Phase Migration Approach Plan will be provided to the State in Microsoft Word format. The document will be submitted electronically (by email) by the Contractor to the State

project manager. The State will review the document and notify the Contractor of any changes required within 5 business days. A notice of completion document will be generated and executed upon the decision by the State to accept the document.

- A.6. Phased Migration of Pilot Users. The migration of the 3,000 users will be completed using a phased approach. The Contractor will provide consulting services to guide the State through the completion of the migration processes and procedures necessary to complete each phased migration. Prior to the migration of users, the Contractor will assist the State in assessing the impact to the user's desktop and server environment and assist in the development of a mitigation plan to address any outstanding issues.

The Contractor will provide consultant(s) to work side-by-side with the State during the migration of the pilot users, their workstations, and associated file services to AD. The Contractor will be directly responsible for leading the migration effort for the pilot users. The State will provide technical staff to work with the Contractor during the migration of these users, however, the Contractor will lead the effort and be responsible for the overall migration effort. The intent is to ensure that State technical staff members are adequately prepared to carry out the production migration project as independently as possible.

Each phase of the migration may include a different number of users, however, the State will compensate the contractor for each increment of 500 users, as described in Contract Section C.3.b.

- a. The successful migration of a user is deemed to have occurred when all of the following are true:
 - i. the user has a functioning account created in AD and is able to authenticate to the account from the desktop;
 - ii. the user's workstation has been migrated into AD;
 - iii. all associated file services for the user have been migrated to the Microsoft Windows environment and are accessible to the user; with the least amount of disruption and the most possible availability to the end users. The decision of when to migrate shared file services to AD is at the sole discretion of the State. An acceptable portion of the shared data may be determined on a case by case basis by the State.
 - iv. the user's desktop experience is fully functional with all desktop software products and agency applications continuing to function the same as they did prior to the user's migration to AD; however, the Contractor is not responsible or expected to rewrite or integrate Windows NT 4.0 applications that are not compatible with Windows 2003 Server and Active Directory. The Contractor is not responsible or expected to rewrite or integrate NDS applications that are not compatible with Windows 2003 Server and Active Director. The Contractor will assist the State in developing an application remediation strategy for Novell and Windows NT 4.0.
 - v. when and where deemed appropriate, removal of the Novell client from the user's workstation
 - vi. the user has been using the Active Directory user account for a period of 10 business days with no reported help desk tickets.
- b. At the completion of the migration of each increment of 500 users, the Contractor will review the Phased Migration Approach Plan and incorporate any necessary changes into the Plan to ensure the successful completion of the project. Specifically the Contractor will review the migration processes and procedure documents and modify as necessary to address any

issues that may have been identified during the completion of this migration phase or as necessary during the execution of the user migration process.

A.7. State Staff Mentoring.

- a. The Contractor will provide mentoring to state staff throughout the project. This mentoring will consist of the Contractor providing guidance, assistance, and working side-by-side with state staff during the completion of each phased migration of the users in the pilot project to AD.
- b. At the completion of the Phased Migration of Pilot Users to AD, the Contractor will provide a two-day post-migration review with key state staff to ensure that the migration methodology is well understood and additional agency migrations can proceed rapidly. The contractor will review the implications to infrastructure as additional users and data volumes are migrated. The contractor will review any significant cautions that state staff should look for that may trigger problems to the infrastructure or the migration process. This session should be designed to be very interactive between contractor staff and state staff.

A.8. Technical Support Services. After the completion of the pilot project, the State may request, on an as-needed basis and at its sole discretion, Technical Support Services related to the State's use of the NDS Migrator or other Quest migration tools that are not covered under the technical support provided with the purchase of licensing for each tool. These services are intended to address issues that may arise during the migration effort for users beyond the 3,000 pilot-project users.

- a. The support shall be provided either by phone or email and consulting resources will be available Monday thru Friday, between the hours of 8:00 am and 8:00 pm Central Time (CT).
- b. The Contractor will adhere to the following timeframes for responding to requests for technical support:
 - i. For all requests from the State for Technical Support that are received by the Contractor by 2:00 PM CT, the Contractor shall respond to the State on before 5:00 PM CT on that same day. This response shall consist of either the technical support or information requested, or a confirmation that the Contractor has received the State's request and will provide the actual technical support or information within three (3) business days from the date and time of the State's request.
 - ii. If the request is received by the Contractor later than 2:00 PM CT, the Contractor shall respond to the State by 10:00 AM CT the following business day. The possible responses are as described in A.8.b.i above.
 - iii. In the event that the State identifies the request as urgent, the vendor shall provide a final response with the technical support or information requested no later than one (1) business day from the date and time of the State request.
- c. The staff responding to these requests and providing this support shall be trained to enable the staff, in most cases, to address questions and solve problems themselves, without having to refer the questions elsewhere.

A.9. Technical Assumptions. The State and the Contractor assume the following statements are accurate about the State's current environment:

- a. The State's Active Directory environment is under the control of the State technical staff assigned to the project.

b. The State will ensure that all systems (including file servers) involved in the migration are included in a daily backup process.

c. The Contractor will provide a designated project manager and the State will identify a project manager to work together on a daily basis to ensure the Contractor has reasonable access to State resources, the State's infrastructure and environments, and other needs as may be required to facilitate the completion of the pilot migration project. The State project manager will coordinate all State resources and the Contractor project manager will coordinate all Contractor provided resources.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on July 11, 2008 and ending on July 10, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed WRITTEN DOLLAR AMOUNT (\$NUMBER). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Initial Assessment and Phased Migration Approach Plan	\$ NUMBER
Phased Migration of Pilot Users	\$ NUMBER for each increment of 500 users

Completion of State Staff Mentoring	\$ NUMBER
Technical Support Services	\$ NUMBER per hour

- c. The Contractor shall invoice the State for the “Initial Assessment and Phased Migration Approach Plan” upon receiving the State’s written notice of completion of Phased Migration Approach Plan document. Compensation to the Contractor for the Initial Assessment tasks shall be included as a part of the overall compensation amount for the Phased Migration Approach Plan.
- d. The contractor will be compensated for each increment of 500 users authorized by the State to be migrated under the line item “Phased Migration of Pilot Users”. With regard to the “Phased Migration of Pilot Users” payments, each phase of the migration may include a different number of users. However, the State shall compensate the vendor for each authorized increment of 500 users migrated whenever the Contractor reaches the next threshold by successfully migrating a total of 500 additional users. The State reserves the right to terminate any or all authorized increments of the Phased Migration of Pilot Users line item at any point during the term of the Contract. In the event that the State does terminate an authorized increment prior to the Contractor successfully migrating all 500 users of the authorized increment threshold, the State shall compensate the Contractor for each pilot user that was successfully migrated, by estimating the percentage of completion for a total increment of 500 users. This percentage will be converted to a decimal representation and then multiplied by the compensable amount as referenced in C.3.b for Phased Migration of Pilot Users to determine the amount of partial compensation. The State shall determine when the migration of a pilot user is deemed to be complete.
- e. The Contractor shall invoice the State for “Completion of State Staff Mentoring” after the completion of the “Two-Day Post-Migration Review” described in Contract Section A.7.b. In the event that the State terminates the migration effort prior to the Two-Day Post-Migration Review, the State shall determine the fair amount of compensation for Completion of State Staff Mentoring by estimating the percentage of the State Staff Mentoring task that has been completed as of the termination date. This percentage will be converted to a decimal representation and then multiplied by the compensable amount as referenced in C.3.b for Completion of State Staff Mentoring to determine the amount of partial compensation.
- f. With regard to “Technical Support Services” the following provisions shall apply:
 - i. Remuneration for any such Technical Support Services shall be based on the contingent, payment rate detailed in the table above and as approved by the State.
 - ii. Total compensation to the Contractor for such Technical Support Services as agreed upon by the State and the Contractor shall not exceed [FIFTEEN PERCENT (15%) OF THE TOTAL OF ALL OTHER COSTS EXPRESSED IN THIS CONTRACT] during the period of the Contract, unless amended. If, at any point during the Contract term, the State determines that spending for such approved Technical Support Services would exceed said maximum amount, at the State’s option, the State may execute an amendment to address the need.
 - iii. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Attn: Alan Atherton
Tennessee Department of Finance & Administration
Office for Information Resources
312 8th Avenue North, 15th Floor
Nashville, TN 37243-1510

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Tennessee Department of Finance & Administration, Office for Information Resources
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or

Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
 - a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance

where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

- b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.

- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Alan Atherton, Director of LAN Management Services
Tennessee Department of Finance & Administration
Office for Information Resources
312 8th Avenue North, 15th Floor
Nashville, TN 37243-1510
Email: Alan.Atherton@state.tn.us
Telephone # 615-253-6852
FAX # 615-741-4996

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON
CONTRACTOR NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER

FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have

royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.7. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this Contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if any. The foregoing provision shall not limit the Contractor's liability for intentional torts, criminal acts or fraudulent conduct.

E.8. Contractor warrants that the Activities shall be performed in a workmanlike manner with professional diligence and skill. As the State's exclusive remedy and Contractor's sole obligation for any and all breaches of the foregoing warranty, Contractor shall, at its expense and at the State's option, either re-perform any nonconforming Activities reported to Contractor in writing by the State within thirty (30) days of the performance of the Activities or refund the fees paid for such nonconforming Activities. THE WARRANTIES STATED IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

E.9. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Bid Documentation
- c. The Professional Service Bid Solicitation and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Bid Documentation

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and

performance under this Contract, these documents shall govern in order of precedence detailed above.

IN WITNESS WHEREOF:

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. GOETZ, JR., COMMISSIONER

DATE

APPROVED:

**M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

Professional Service Bid Solicitation

317.03-182-08

Attachment 2, Cost Proposal Bid Sheet

Consulting Services for Pilot Project Migration of Users to Active Directory

COST PROPOSAL BID SHEET			
NOTICE TO PROPOSER: This Cost Proposal MUST be completed EXACTLY as required.			
PROPOSER NAME:			
SIGNATURE & DATE:			
COST BID SCHEDULE			
The proposed cost bid, detailed below, shall indicate the proposed price for providing all services as defined in the <i>Pro Forma</i> Contract Scope of Services for the total contract period.			
The Proposed Cost Bid Per Hour for Technical Support Services below must be a single rate. <u>DO NOT PROPOSE MORE THAN ONE RATE OR A RANGE OF RATES.</u>			
IMPORTANT NOTE: In Contract Section C.3.f, there is a fifteen percent (15%) cap on the total amount of Technical Support Services that can be procured without amending the contract for additional funds. However, this cap is for contractual purposes only and does not apply to, or in any way restrict, the Technical Support Rate amount that the Bidder may propose below.			
Prior to Contract execution, the Proposed Cost Bid amounts below will be transcribed to Contract Section C.3.b.			
Bid Item Description	Proposed Cost Bid	Weight	Weighted Amount (Proposed Cost Bid * Weight)
Initial Assessment and Phased Migration Approach Plan – (one lump sum cost)		1	
Phased Migration of Pilot Users – (cost for EACH Increment of 500 users)		6	
Completion of State Staff Mentoring – (one lump sum cost)		1	
Technical Support Services (cost PER HOUR)		75	
BID EVALUATION AMOUNT * : (weighted sum of all bid cost amounts above)			

* The state will use the *BID EVALUATION AMOUNT* derived from the proposed cost amounts above to determine the Bidder offering the lowest cost to the state.